

**CIRCULAR**

**Guiding the grant and withdrawal of industrial property assessor card and eligibility certificate for industrial property assessment organizations**

Pursuant to the Decree No. 54/2003/ND-CP dated 19 May 2003 by the Government stipulating functions, tasks, competence and organisational structure of the Ministry of Science and Technology and the Decree No. 28/2004/ND-CP dated 16 January 24004 by the Government supplementing and amending a number of articles of the Decree No. 54/2003/ND-CP;

Pursuant to the Decree No. 105/2006/ND-CP dated 22 September 2006 by the Government providing details and guiding implementation of several articles in the Intellectual Property Law on protection of intellectual property rights and state management on intellectual property;

The Ministry of Science and Technology provides guidance on granting and withdrawing industrial property assessor card and legibility certificate for industrial property assessment organizations (hereafter referred to as “industrial property assessment”) as follows:

**I. CONDITIONS AND FORMS OF INDUSTRIAL PROPERTY ASSESSMENT**

**1. Subjects of industrial property assessment**

Industrial property assessment stipulated at Item 2.b, Article 39 of the Decree No. 105/2006/ND-CP consists of the following subjects:

- a) Assessment of inventions and semi-conductor integrated circuit layout designs;
- b) Assessment of industrial designs;
- c) Assessment of trademarks and geographical indications;
- d) Assessment of other industrial property rights.

**2. Conditions for granting industrial property assessor card**

The conditions for granting industrial property assessor card (hereafter referred to as “assessor card”) stipulated at Article 44.3 of the Decree No. 105/2006/ND-CP can be interpreted as follows:

a) Being a university graduate in the assessment subject can be interpreted as a person having bachelor or master degree in engineering, physics, chemistry or biology for assessment of inventions and semi-conductor integrated circuit layout designs; a person having bachelor or master degree in any field for other assessment subjects.

b) Having virtuous characters can be interpreted as a person having not been subject to any administrative violations for violating industrial property rights or professional ethics nor accused of criminal liability nor suspected guilty.

c) Being qualified in industrial property field can be interpreted as a person granted with eligibility certificate for industrial property assessment as stipulated at II.6.c of this Circular.

### **3. Conditions for operation of industrial property assessment organizations**

Science and technology organizations, businesses shall operate industrial property assessment if they fully meet requirements stipulated at Item 2 and 3, Article 42 of the Decree No. 105/2006/ND-CP, in which “Business license for industrial property assessment operation under current law” is the eligibility certificate for industrial property assessment granted under Item IV.3 of this Circular (hereafter referred to as “certificate for assessment organizations”).

### **4. Forms of industrial property assessment operation**

Individuals granted with assessor card shall choose only one of the two operation forms stipulated in Article 44.1 of the Decree No. 105/2006/ND-CP. If an individual chooses the form of industrial property assessment organization, he/she must be acknowledged in the list of assessors of that organization under the procedures of granting certificate for assessment organizations and the operation form shall be acknowledged in the list of industrial property assessors described at Item III.6 of this Circular.

## **II. TEST FOR INDUSTRIAL PROPERTY ASSESSMENT**

### **1. Content of the test and persons exempted from the test for industrial property assessment**

a) The content of the test for industrial property assessment is stipulated in Article 44.3.d of the Decree No. 105/2006/ND-CP including the subject on industrial property law and other subjects on industrial property assessment.

b) The subject on industrial property law is compulsory for all assessors.

A person having at least 15 successive years of experience in drafting and guiding implementation of legal documents on industrial property; examining industrial property; settling disputes, appeals and inspections on industrial property in state industrial property agencies; doing researches and teaching law on industrial property in legitimate education and training organizations shall be exempted from the subject on industrial property law.

c) Subjects on industrial property assessment including assessment of inventions (and utility solutions) and semi-conductor integrated circuit layout designs, industrial designs, trademarks and geographical indications (and appellations of origin) and other industrial property subject matters shall be included in the test.

A person having at least 15 successive years of experience in providing explanation, guiding implementation of legal provisions, making regulations, directly involving or carrying out substantive examination of inventions (and utility solutions), industrial designs, trademarks and geographical indications (and appellations of origin) in national or international industrial property offices shall be exempted from taking the test for corresponding assessment.

### **2. Professional Testing Council for industrial property assessment**

a) Upon request of the National Office of Intellectual Property (NOIP), the

Minister of Science and Technology has issued a decision on establishing a Professional Testing Council for industrial property assessment (hereafter referred to as “Testing Council”). Chairman of the Testing Council shall be the Director General of the NOIP, members of the Testing Council should be experienced and prestigious in the field of industrial property.

b) The Testing Council shall be responsible for making test forms (including answer keys and grades), organizing examinations and evaluating the results as stipulated at Items II. 3, 5 and 6 of this Circular.

c) The Testing Council shall have the right to use the NOIP stamp to serve the test of industrial property assessment.

d) The NOIP shall assist the Testing Council and bear responsibilities stipulated at Items II.3 and 5 of this Circular and other responsibilities on an assignment of the Chairman of the Testing Council.

### **3. Organization of the test**

a) The NOIP shall publicize information related to the test on its website and on 3 successive editions of a central daily newspaper notifying conditions for taking the test, procedures for test registration, test preparation in focus, test time and venue.

b) The test shall take place within three months since the date when registration dossiers of at least five applicants are accepted according to Item II.5a of this Circular.

c) The test shall be randomly selected from the test question systems by the Chairman of the Testing Council as mentioned at Item II.2b of this Circular.

### **4. Registration dossier**

Registration dossier consists of following documents:

- a) Registration form attached in the Annex I of this Circular;
- b) A copy (with public notary) of the undergraduate or graduate degrees;
- c) Confirmation of work duration by applicant’s employer if he/she requests exemption for subjects as mentioned at Item II.1b,c of this Circular;
- d) 02 pictures of 3 x 4 cm;
- e) Receipts of fees and charges.

### **5. Competence and procedures for checking registration dossier**

The NOIP is the office to receive registration dossiers. Within 15 days since the receiving date, the NOIP shall be responsible for checking registration dossiers in compliance with the following provisions:

a) If the dossier is sufficient as provided at Item II.4 of this Circular and the applicant fulfils requirements to take the test, the Director General of the NOIP shall deliver a notification on acceptance of the dossier which clarifies whether testing schedule is fixed or cannot be fixed due to unadequate number of test takers as regulated at Item II.3b of this Circular.

b) If the dossier is insufficient or the applicant does not fulfil requirements to take the test, the Director General of the NOIP shall deliver a notification on temporary refusal of the dossier which clarifies reasons and sets a deadline of one month for the

applicant to make supplements or objections. If the deadline is over and neither does the applicant make any amendments or objections nor are the amendments or objections satisfactory, the Director General of the NOIP shall deliver an official notification on refusal of the dossier which clarifies reasons for refusal.

### **6. Evaluation of the test**

a) The test shall be marked basing on answer keys and grades of the subject. The results shall be checked and approved by the Chairman of the Testing Council.

b) Those obtaining the mark of average upwards or being exempted from taking the test of any subject shall be considered as being qualified at that subject.

c) Within two months since the testing date, the Chairman of the Testing Council shall inform test results to test takers and grant eligibility certificate for industrial property assessment to qualified people as mentioned in the Annex V of this Circular). The certificate includes information of the assessment subject corresponding to the tested subject and shall be valid (to make a request for granting assessor cards) in one year since the date of issuance.

d) Within 15 days since the announcement of test results, the examinees have the right to request the testing council to recheck the test and pay the rechecking fees under the said provisions. Rechecking shall be carried out according to marking principles.

## **III. COMPETENCE, PROCEDURES FOR THE GRANT AND WITHDRAWAL OF ASSESSOR CARDS**

### **1. Competence for the grant, re-grant, and withdrawal of assessor cards; making and publishing the list of industrial property assessors**

The Director General of the NOIP shall be competent to grant, re-grant, withdraw assessor cards, to make and publish the list of industrial property assessors under Item III.3, 4, 5 and 6 of this Circular.

The NOIP shall receive and examine application requesting for the grant, re-grant, withdrawal of assessor cards under Item III.2, 3 and 4 of this Circular.

### **2. Application for the grant of assessor cards**

A dossier applied for an assessor card consists of the following documents:

- a) A declaration form attached in the Annex II of this Circular;
- b) The original or copy of eligibility certificate for industrial property assessment issued by the Chairman of the Testing Council as stipulated in Item II.6.c of this Circular;
- c) A copy of identification card (ID);
- d) 02 photos of 3x4 cm size;
- e) Receipts of paid fees and charges.

### **3. Procedures for the grant of assessor card**

Within one month since the receiving date, the NOIP shall examine the dossier under the following provisions:

a) If the dossier satisfies provisions under Item III.2 of this Circular and the applicant fulfils requirements under Item I.2 of this Circular, the Director General of

the NOIP shall grant assessor card in which full name, permanent home address, ID number and assessment subject of the assessor shall be specified.

b) If the dossier is insufficient and the applicant does not fulfil requirements under Item I.2 of this Circular, the Director General of the NOIP shall issue a temporary refusal of the application in which reasons for refusal shall be clearly mentioned and a deadline of one month shall be set for the applicant to make amendments or objections. If the deadline is over and neither does the applicant make any amendments or objections nor are the amendments or objections satisfactory, the Director General of the NOIP shall issue a decision on refusal of the application in which reasons for refusal shall be specified.

c) The assessor card shall be made according to the form attached in Annex IV of this Circular.

#### **4. Re-granting of the assessor card**

a) Upon request of the assessor, the NOIP's Director General shall decide to re-grant assessor's card in case the card is lost, mistaken or too defected (torn-out, contaminated or faded) to be used; or the information in the card is changed under Item III.3a of this Circular.

b) The assessor has the right to request the NOIP to re-grant a new assessor card in which changes mentioned in the (a) are acknowledged .

c) Provisions under Item III.2 and 3 shall be applied for re-granting assessorcard; examination time shall be within 15 days since the NOIP receives the dossier.

d) If the defect of the assessor card is caused by the NOIP, the NOIP shall be responsible for re-granting the Card free of charge within five days after receiving the request.

#### **5. Withdrawal of the assessor card**

The Director General of the NOIP shall issue a decision on the withdrawal of assessor card in the following cases:

a) There is evidence showing that the assessor card is granted illegally;

b) The owner of the assessor card no longer complies with regulations provided in Article 44.3 of the Decree No. 105/2006/ND-CP and Item I.2 of this Circular;

c) The owner of the assessor card is deprived of the right to use the Card in an indefinite time by a competent agency as stipulated in Article 8.2 of the Decree No. 106/2006/ND-CP dated 22 September 2006 by the Government on settlement of administrative violations on industrial property;

d) The owner of the assessor card stops carrying out assessment operation.

#### **6. Making and publishing the List of industrial property assessors, notification on change of information in the assessor's card**

a) The NOIP shall make a List of industrial property assessors, acknowledge, eliminate names of assessors from the List of industrial property assessors according to decisions on the grant, re-grant, withdrawal of assessor card, acknowledge the performance of assessors complying with the List of industrial property assessment organizations under Item IV.6 of this Circular. The List of industrial property assessors and the List of industrial property organizations shall be published in the industrial

property Gazette and on the electronic site of the NOIP. b) The NOIP shall notify Departments of Science and Technology of changes relating to assessor card of assessors working for local industrial property assessment organizations to serve the grant, re-grant and withdrawal of Certificate of assessment organizations at local level.

#### **IV. COMPETENCE, PROCEDURES FOR THE GRANT AND WITHDRAWAL OF CERTIFICATE FOR ASSESSMENT ORGANIZATIONS**

##### **1. Competence for the grant, re-grant, withdrawal of Certificate for assessment organizations, making and publishing the List of industrial property assessment organizations**

a) The Director General of the NOIP shall be competent to grant, re-grant, withdraw Certificate of assessment organizations, to make and publish the List of industrial property assessment organizations as stipulated in Item IV.3, 4, 5 and 6 of this Circular for organizations registering for scientific and technological operation at the Ministry of Science and Technology.

b) Directors of Science and Technology Departments shall be competent to grant, re-grant, withdraw Certificate for assessment organizations, to make and publish the List of industrial property assessment organizations as stipulated in Item IV.3, 4, 5 and 6 of this Circular for organizations registering for scientific and technological operation at the Ministry of Science and Technology.

c) The NOIP and Departments of Science and Technology shall receive and examine applications for Certificate for assessment organizations at their corresponding competence as stipulated in (a) and (b) being mentioned above.

##### **2. Application for Certificate for assessment organizations**

A dossier of application for Certificate for assessment organizations consists of the following documents:

a) An application form requesting for Certificate for assessment organizations attached in the Annex III of this Circular;

b) A copy (with public notary) of Registration for scientific and technological operation stipulated in Article 42.3.b of Decree No. 105/2006/ND-CP;

c) A copy (with public notary) of decision for employment or labour contract between the industrial property assessment organization and the assessor who works for the organization;

d) Receipts of paid fees and charges.

##### **3. Procedures for granting Certificate for assessment organizations**

Within one month since the receiving date, the NOP and Department of Science and Technology shall examine the application dossier under the following provisions:

a) If the dossier satisfies provisions under Item IV.2 of this Circular or the organization fulfils requirements under Item I.3 of this Circular, the Director General of the NOIP and the Director of Science and Technology Department shall decide to grant a Certificate for assessment organization, in which transaction name, address of the organization, assessment subject corresponding to its assessor's field and the list of industrial property assessors being members of the organization shall be specified.

b) If the dossier is insufficient or the organization does not fulfil requirements under Item I.3 of this Circular, the Director General of the NOIP, the Director of Science and Technology Department shall issue a temporary refusal of the application, in which reasons for refusal shall be clarified and a deadline of one month since the issuance of the notification shall be set for the applicant to make amendments to the dossier or objection against the refusal . In case, the deadline is over and neither does the organization make any amendments or objections nor are the amendments or objections satisfactory, the Director General of the NOIP, the Director of Science and Technology Department shall issue a decision to refuse granting Certificate to assessment organization, in which reasons for refusal shall be specified.

c) Certificate for assessment organization shall be made according to the sample form attached in the Annex IV of this Circular.

#### **4. Re-granting Certificate for assessment organization**

a) Upon request of the assessment organization, the Director General of the NOIP, the Director of Science and Technology Department shall issue a decision on re-granting Certificate for assessment organization in case the Certificate is lost, mistaken or too defected (torn-out, contaminated or faded) to be used; or the information contained in the Certificate is changed under Item IV.3a of this Circular.

b) The assessment organization is supposed to request the NOIP for a new Certificate in which changes mentioned in item a above are acknowledged.

c) Provisions under Item IV.2 and 3 of this Circular shall be applied for re-granting Certificate for assessment organization; examination of the dossier shall be within 15 days since the NOIP, the Department of Science and Technology receives the application.

d) If the defect of the Certificate for assessment organization is caused by the NOIP or the Department of Science and Technology, the granting authority shall be responsible for re-granting the Certificate free of charge within five days after being requested by the assessment organization .

#### **5. Withdrawal of Certificate for assessment organization**

The Director General of the NOIP, the Director of Science and Technology Department shall issue a decision on withdrawal of Certificate in the following cases:

a) There is evidence showing that the Certificate is granted illegally;

b) The organization no longer complies with regulations provided in Item I.3 of this Circular;

c) The organization stops carrying out assessment operation.

#### **6. Making and publishing the List of industrial property assessment organizations, notifying changes concerning Certificate for assessment organizations**

a) The NOIP shall make a List of industrial property assessing organizations, acknowledge, eliminate names of assessment organizations from the List of industrial property assessment organizations according to decisions on the grant, re-grant, withdrawal of Certificate for assessment organizations; and publish the List in the industrial property Gazzete and on the electronic site of the NOIP.

b) Departments of Science and Technology shall notify the NOIP on the grant, re-grant, withdrawal of Certificate for assessment organizations to serve the establishment of the List of industrial property assessing organizations as stipulated in (a) of this article.

## **V. IMPLEMENTATION**

### **1. Appeal and denouncement**

Appeals, settlement of appeals; denouncement, settlement of denouncement for infringing acts concerning procedures for the grant, re-grant, withdrawal of assessor card and Certificate for assessment organizations shall be implemented under the appeal law.

### **2. Fees and charges**

Collecting, paying, managing and using fees and charges for assessment test, examination of dossier, granting, re-granting Assessor's Card and Certificate for assessment organizations stipulated in this Circular shall be temporarily applied under the provisions corresponding to industrial property services in Circular No. 132/2004/TT-BTC dated 30 December 2004 by the Ministry of Finance on guiding the collecting, receiving, managing and using industrial property fees and charges until stated otherwise.

### **3. Validity**

This Circular comes into effect 15 days after its publication in "CONG BAO".

In the implementation process, any problem, if arises, should be reported to the Ministry of Science and Technology for solutions. /.

#### ***Received by:***

- The Supreme People's Court;
- The Ministry of Trade and Industry; the Ministry of Finance; the Ministry of Public Security; the Ministry of Culture, Sports and Tourism; the Ministry of Agriculture and Rural Development; the Ministry of Telecommunications;
- People's Committee of provinces, centrally-administered cities;
- Departments of Science and Technology;
- Office for examination of legal documents (the Ministry of Justice);
- Gazette, the Government's website;
- Inspectorate of Science and Technology;
- Archive, the National Office of Intellectual Property.

**ON BEHALF OF THE MINISTER**

**VICE-MINISTER**

**(signed)**

**Nguyen Quan**